

HOUSE BILL NO. 636

INTRODUCED BY S. DICKENSON, AUGARE, BELCOURT, GETZ, HANDS, HENRY, MEHLHOFF

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM CORPORATE GROSS INCOME AND FROM INDIVIDUAL ADJUSTED GROSS INCOME THE AMOUNT OF THE GAIN ~~REALIZED~~ RECOGNIZED FROM THE SALE OR EXCHANGE OF A MOBILE HOME PARK TO CERTAIN ENTITIES; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Capital gain exclusion from sale of mobile home park. (1) The amount of the gain ~~realized~~ RECOGNIZED from ~~ADJUSTED GROSS INCOME OR~~ the sale or exchange of a mobile home park as defined in 70-33-103 is excluded from ADJUSTED GROSS INCOME OR gross corporate income in computing net income under this chapter 30 OR 31. To qualify for the exclusion under this section, the sale must be made to:

- (a) a tenants' association or a mobile home park residents' association;
- (b) a nonprofit organization under section 501(c)(3) of the Internal Revenue Code that purchases a mobile home park on behalf of tenants' association or mobile home park residents' association;
- (c) a county housing authority created under Title 7, chapter 15, part 21; or
- (d) a municipal housing authority created under Title 7, chapter 15, parts 44 and 45.

(2) A corporation, an individual, a partnership, an S. corporation, or a disregarded entity qualifies for the exclusion under this section. If the exclusion allowed under this section is taken by a partnership, an S. corporation, or a disregarded entity, the exclusion must be attributed to shareholders, partners, or other owners, using the same proportion used to report the partnership's, S. corporation's, or disregarded entity's income or loss for Montana income tax purposes.

(3) FOR THE PURPOSE OF THIS SECTION, "TENANTS' ASSOCIATION" OR "MOBILE HOME PARK RESIDENTS' ASSOCIATION" MEANS A GROUP OF TWO SIX OR MORE TENANTS WHO RESIDE IN A MOBILE HOME PARK, HAVE ORGANIZED FOR THE PURPOSE OF EVENTUAL PURCHASE OF THE MOBILE HOME PARK, AND HAVE ESTABLISHED BYLAWS OF THE ASSOCIATION, AND HAVE OBTAINED THE APPROVAL BY VOTE OF AT LEAST 51% OF THE RESIDENTS OF THE MOBILE HOME PARK TO PURCHASE THE MOBILE HOME PARK.

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2 **Section 2.** Section 15-30-111, MCA, is amended to read:

3 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal adjusted gross
4 income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the
5 following:

6 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
7 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
8 under federal law;

9 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
10 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

11 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
12 reduction of Montana income tax liability;

13 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue
14 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

15 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

16 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the
17 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

18 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of
19 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
20 of the same estate or trust for the same tax period; and

21 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after
22 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted
23 gross income.

24 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
25 include the following, which are exempt from taxation under this chapter:

26 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
27 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
28 from taxation by Montana under federal law;

29 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
30 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family

1 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated
2 beneficiary;

3 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
4 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

5 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
6 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
7 of the same estate or trust for the same tax period;

8 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch
9 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction
10 is not provided for federal income tax purposes;

11 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
12 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
13 taxpayer meet the filing requirements in 15-30-142.

14 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
15 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; ~~and~~

16 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

17 (s) the amount of the gain realized RECOGNIZED from the sale or exchange of a mobile home park as
18 provided in [section 1].

19 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall
20 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
21 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
22 is effective.

23 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
24 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
25 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and
26 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
27 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
28 be made to determine the amount of income or loss of the partnership or small business corporation.

29 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
30 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal

1 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement
2 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
3 Montana return.

4 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
5 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
6 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
7 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
8 must be split equally on each return.

9 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
10 who file separate Montana income tax returns are not required to recompute allowable passive losses according
11 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
12 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
13 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

14 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
15 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
16 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
17 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

18 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
19 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate
20 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
21 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
22 gross income.

23 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and
24 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana
25 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The
26 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross
27 income.

28 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
29 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
30 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is

absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch.

1 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

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3 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
4 integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 1].

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6 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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8 NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies retroactively, within the
9 meaning of 1-2-109, to tax years beginning after December 31, 2008.

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